

MINUTES OF MEETING OF BOARD OF PUBLIC WORKS OF THE STATE OF MARYLAND.
OF FEBRUARY 11, 1935.

The Board of Public Works met in the offices of the Governor, Annapolis, on Monday, February 11th, 1935.

Present:

Harry W. Nice, Governor.
Wm. S. Gordy, Jr., Comptroller.
Hooper S. Miles, Treasurer.

Herbert R. O'Connor, Attorney General of Maryland, attended the meeting.

The meeting was called for the purpose of discussing the procedure necessary to obtaining a loan of \$1,000,000.00 from banking institutions of the State, to be credited to the Annuity Bond Account, and the proceeds to be used for the payment of principal of and interest on State bonds maturing February 15th, 1935.

The following Resolution was unanimously adopted.

A RESOLUTION OF THE BOARD OF PUBLIC WORKS

WHEREAS, by Section 10 of Chapter 597 of the General Assembly of Maryland, passed at the regular session of 1933, the Board of Public Works was authorized and empowered to procure, through advances in anticipation of taxes levied for any year, a sum not exceeding one million dollars (\$1,000,000.00), and

WHEREAS, there will become due on February 15th, 1935, certain principal of and interest on outstanding State bonds to which State taxes levied for the calendar year, beginning January 1st, 1935, have been levied and appropriated, and

WHEREAS, there are uncollected taxes due and to become payable to the State under levies made for the said calendar year, in the sum of \$3,589,071.37 as of January 31st, 1935, therefore be it unanimously

RESOLVED, That the Treasurer be and he is hereby authorized to negotiate from any banking institution or institutions in this State, an advance or advances in the total aggregate amount of \$1,000,000.00, and to credit the same to the annuity bond account, and to use the proceeds of such advances to pay the principal of and interest on State bonds maturing February 15th, 1935, and be it further

RESOLVED, That there is hereby assigned and set over to such banking institution or institutions, making said advances out of the said taxes, as and when collected, the several sums respectively advanced by such banking institution or institutions, and the Treasurer of the State is hereby authorized, empowered and directed to repay out of the first monies hereafter received from the proceeds of taxes levied for the calendar year, 1935, the sums so advanced by said institution or institutions, and be it further

RESOLVED, That interest on the said advances shall be paid at the rate of 1% for the period of four months from the date of said advances, and shall be paid by the Treasurer to the institution or institutions entitled thereto out of any funds in the Treasury not otherwise dedicated, and be it further

RESOLVED, That the Comptroller is authorized, empowered and directed to issue his warrant or warrants to the Treasurer for the aggregate amount of \$1,000,000.00 and the Treasurer is authorized to receipt for the said advances on the said warrant, which shall be in substantially the following form:

Hon. Hooper S. Miles,
Treasurer of Maryland,
Annapolis, Maryland.

You are hereby authorized to Receive from the _____ Company, the sum of \$ _____, as an advance against the State taxes which have been levied for the calendar year beginning January 1, 1935, under the authority and pursuant to the provisions of a resolution of the Board of Public Works of Maryland adopted on the 11th day of February, 1935, and for so doing this shall be your sufficient warrant.

Comptroller of the State
of Maryland.

This will acknowledge this _____ day of February, 1935, the receipt from _____ company of the sum of \$ _____, as an advance by it against State taxes levied during the calendar year beginning January 1st, 1935, which advance has been made pursuant to the provisions of a resolution of the Board of Public Works of Maryland, adopted on the 11th day of February, 1935, and I hereby agree that the State taxes levied for the year 1935, when received by me, shall be segregated, and on or before four months from this date, the said sum so advanced shall be repaid to the said Company out of said taxes so received and segregated.

Treasurer of Maryland.

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There being no further business the meeting adjourned.


Secretary.

* The Opinion of the Attorney General is recorded herewith -

STATE LAW DEPARTMENT

BALTIMORE MD.

February 9, 1935.

Board of Public Works,
Union Trust Building,
Baltimore, Maryland.

Gentlemen:-

I understand that there are taxes due to the State under levies made for the calendar year 1935 in the sum of approximately \$3,589,071.37, as shown on the Comptroller's statement of January 31st, 1935; that these taxes, when collected, will be available for the annuity fund to meet the maturing principal of and interest on outstanding State bonds to which purpose the said taxes are appropriated by law.

I further understand that you propose to secure advances aggregating the total of \$1,000,000.00, against these uncollected taxes, the proceeds to be placed in the annuity bond account and applied to the payment of principal and interest on State bonds maturing February 15th, 1935. You have asked for an expression of my opinion as to whether the Board of Public Works may, under the Constitution and existing laws of the State, legally procure such advances and validly secure the repayment of such advances out of the said taxes.

Section 10 of Chapter 597 of the Acts of 1933, provides as follows:

"And be it further enacted, that the Board of Public Works be and it is hereby authorized and empowered to borrow money upon the credit of the State at any time during the fiscal period covered by the budget, any sum or sums not to exceed fifty thousand dollars (\$50,000.00) in the aggregate to meet temporary deficits in the Treasury, and in addition thereto the said Board of Public Works shall have power to borrow upon the credit of the State during said period not exceeding \$1,000,000.00, in anticipation of taxes levied for any year. All sums borrowed in pursuance of this section shall bear interest at a rate to be determined by the Board of Public Works and shall mature and be repaid on or before the first day of October, 1936".

Section 34 of Article III of the Constitution provides:

"No debt shall be hereafter contracted by

the General Assembly unless such debt shall be authorized by a law providing for the collection of an annual tax or taxes sufficient to pay the interest on such debt as it falls due, and also to discharge the principal thereof within fifteen years from the tax of contracting the same; and the taxes laid for this purpose shall not be repealed or applied to any other object until the said debt and interest thereon shall be fully discharged. The credit of the State shall not in any manner be given, or loaned to, or in aid of any individual association or corporation; nor shall the General Assembly have the power in any mode to involve the State in the construction of Works of Internal Improvement; nor in granting any aid thereto, which shall involve the faith or credit of the State; nor make any appropriation therefor, except in aid of the construction of Works of Internal Improvement in the counties of St. Mary's, Charles and Calvert, which have had no direct advantage from such works as have been heretofore aided by the State; and provided that such aid, advances or appropriations shall not exceed in the aggregate the sum of five hundred thousand dollars. And they shall not use or appropriate the proceeds of the Internal Improvement Companies, or of the State tax, now levied, or which may hereafter be levied, to pay off the public debt (or) to any other purpose until the interest and debt are fully paid or the sinking fund shall be equal to the amount of the outstanding debt; but the General Assembly may, without laying a tax, borrow an amount never to exceed fifty thousand dollars to meet temporary deficiencies in the Treasury, and may contract debts to any amount that may be necessary for the defence of the State."

In my opinion this section of the Constitution does not prohibit the obtention of funds in anticipation of taxes already levied for the current year, the effect of the transaction being that the advance is applied to the very purpose for which the taxes were levied, and the taxes when paid, will restore the funds advanced.

Full authority for such an anticipation of taxes is, in my opinion, to be found in the Act of the Legislature above quoted. While this question has not been before the Maryland Courts, abundant authority is to be found elsewhere for the proposition that the obtention of money in anticipation of taxes does not create a debt within the meaning of Constitutional or statutory provisions, requiring that provision for payment must be made contemporaneously with the incurring of a debt. Rowley v. Clark, 162 Ia. 732; State v. State Board of Examiners, 59 Mont. 557; Stein v. Morrison, 9 Ida. 426; State v. Parkinson, 5 Nev. 15.

The rule is clearly stated in 59 C. J. page 223, Section 369:

"Although it has been broadly held that whenever the legislature has made provision for payment in anticipation of revenues, no debt within a constitutional limitation has been created, this has been generally accepted only so far as it applies

to indebtedness that would be satisfied before the next session of the legislature. If the appropriations or other obligations assumed during any fiscal year, aside from governmental expense, exceed the revenues of that year, such excess has been held to constitute an indebtedness within the meaning of the constitution. It has been held that a State debt includes all absolute obligations to pay money, or its equivalent, from funds to be provided, as distinguished from money presently available or in process of collection, and so treatable as on hand. An obligation, although amounting to a technical debt, is not forbidden by the provisions of the constitution limiting either its creation or its amount, if funds are in the Treasury to meet it, or if the uncollected revenue provided for the year in which it is created will be sufficient to meet it when collected, although payment is deferred; obligations that run current with revenues are not debts within a constitutional limitation. Likewise, an appropriation from public funds available for that purpose does not create a debt within a constitutional limitation, nor a mere transfer from one fund to another of money in the treasury, nor an appropriation of revenue assessed and in process of collection, or of revenue provided for by the revenue laws, even though the appropriation is in anticipation of such revenue; nor does the issuance of a state warrant, where the money is in the treasury, or where a tax levy has been made with provision for its collection, create a debt within a constitutional limitation; likewise, the issuance of treasury notes, in anticipation of revenues from taxes levied, does not incur an indebtedness within a constitutional limitation".

See also

Cases collected in 45 Harvard Law Review, page 704 and notes in

44C.J. Sec. 4066, page 1132.

In regard to the payment of interest upon the advance, I have no doubt that the obligation to pay such interest is also not a debt within the meaning of the Constitutional provision.

59 C. J. page 225.

"If the issuance of a warrant creates no debt within a constitutional limitation, the allowance of interest does not make the warrant unconstitutional. That warrants issued in anticipation of assessed revenues draw interest does not make the issuance of the warrants an incurring of an indebtedness to the extent of such interest; but where the interest on bonds is not payable out of the same fund as the principal, in-

terest coupons have been held to evidence a debt within the meaning of the constitution."

If the funds advanced were to carry interest payable with proceeds from the tax collections, the transaction might be open to objection that such a payment would divert tax revenues from the purposes for which it was levied, to the payment of interest. This difficulty can be obviated by the payment of the interest out of other undedicated funds, pursuant to the authority of Section 10.

As to the form of the transaction, I enclose herewith an appropriate resolution to be adopted by the Board of Public Works, authorizing the Treasurer to receive the sums to be advanced pursuant thereto, upon the warrant of the Comptroller, and to reimburse the parties making said advances from the taxes as and when received.

I am also attaching a form of warrant from the Comptroller to the Treasurer, directing him to receive these advances. When signed by the Comptroller and receipted by the Treasurer, the warrant will serve in connection with the resolution of your Board, as a receipt to the institution making the advance, and evidence its right to receive the money so advanced from the Treasurer, out of the taxes as and when received.

Very truly yours,

/s/ Herbert R. O'Connor.

Attorney General.

HRO'C:HF